O. Requisitioning 51 pt II

1951

File No.

Legal Department—

A BRANCH

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Subject:—

Opinions under the Bombay Land Requisition Act, 1948

[For previous pps. pl. see pt I]

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5 copies.

17186/ 18-8-51.

Legal Department.

Section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 reads as follows :-

"This Act shall not apply to any premises belonging to the Government or local authority or apply as against Government or any tenancy or other like relationship ~~x~~ created by a grant from the Government, in respect of premises taken on lease or requisitioned by Government but it shall apply in respect of premises let to the Government or a local authority".

In view of this provision section 25 of the Rent Act will not apply to requisitioned premises and there would be no legal objection to allot the requisitioned premises even for a non-residential purpose even though such premises before requisition were used for a residential purpose. The view taken by the Labour and Housing Department is correct.

Sd/-

Additional Secretary to Government.

U.R. to L. & S.D. No. 15160, dated 22nd September 1951.

S.C. 9/7

4 copies.

Office of the R.L.A.

Requisition of premises for providing accommodation for a non official body for the purpose of election will not be a public or State purpose within the meaning of the Bombay Land Requisition Act, 1948.

Sd/-J.R.Dhurandhar.
29-9

Remembrancer of Legal Affairs.

U.R. to R.D/ (Accom.) No. 15549 dated the 29th September 1951.

S.C. 9/7

4 copies.

The question raised by the R.D. is whether Government can requisition any premises for a person who has already got the ~~same~~ accommodation, whether adequate or inadequate. The answer to the question is in the negative. As was pointed out by the Addl. R.L.A in his opinion No. 426 dated 5th May 1951, under section 6(4)(a) of the Bombay Land Requisition Act, 1948, Government can requisition premises only ~~only~~ for the purposes of the State or any other public purpose. The expressions "For the purposes of the State" and "any other public purpose" not being defined in the Act, it would be for the Courts to decide what purposes will be covered by these expressions. There should prima facie, however, be no difficulty about the High Court holding that requisitioningpremises for housing persons who have no accommodation amounts to a public purpose. But it is unlikely that the High Court will go further and hold that requisition ing premises even for a person who has already got accommoda-tion, though inadequate for his needs, is requisitioning~~for~~ for a public purpose. It is still more unlikely that the High Court will accept requisitioning for a person who has already adequate accommodation as requisitioningfor a public purpose. ~~Nor~~ would any of the two expedients suggested by R.D. meet the objection. So far as the first expedient is concerned, it is not understood how, if the requisitioning of the premises is for providing accommodation to a Government servant, it can lawfully be allotted to a non-Government servant, even though he might be willing to surrender his premises. In regard to the second expedient suggested by the R.D it will be open to the objection that the person to whom the allotment is made is not a person bona fide without accommodation. In this connection it ~~may~~ may be pointed out that by reason of the amend-ment of the Act recently made, the High Court has power to call for evidence and decide on facts in each case whether requisi-tioningin fact is for a public purpose or not. The requisi-tioning orders for providing accommodation to persons having already adequate or inadequate accommodation are not likely to

stand the test of High Court's scrutiny, unless they are genuinely for persons having no accommodation.

Sd/-B.D.M.

Additional Secretary to Government.

U.R. to R.D. No. 15739 , dated the 4th October 1951.

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22889/6-11-51.

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This is a proposal to requisition the premises till recently occupied by the Exch-ange Bank of India limited (in liquidation) for Kashmir Govt. Departmental Emporium. The point for consideration is whether it is a State or public purpose.

Kashmir is a Part-B-State and not a foreign country as stated in Controller of Accommodations' Office note. Helping a sister State to open an emporium for introducing or popularising its native products in this State is a step in advancing or promoting the trade or commerce between the two States. It will thus be a public purpose and there would be no objection to requisition the premises under the provisions of the Bombay Land Requisition Act, 1948.

Sd/-J.R.Dhurandhar.
6-11

Remembrancer of Legal Affairs.

U.R. to R.D' (Accommodation), No. 17608 dated the 6th November 1951.

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In view of the fact that the Samiti has since got itself registered under the Societies Registration Act and amended its constitution so as to confer the benefit of its activities upon the residents of A ward generally, there would be nc objection now to requisition premises for its use.

Sd/-J.R.Dhurandhar.
18-11

Remembrancer of Legal Affairs.

R. to R.D. (Accom.) No. 18405 , dated the 19th Nov. 1951.

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Legal Department.

yment of riot-tax.

Bombay Land Requisition Act, 1948

and

City of Bombay Police Act, 1902 Section 45.

R.L.A.'s opinion Nos. 2523 dated 9-2-1951 and 12969 dated 12-9-50.

In his opinion No. 2523 dated the 9th February 1951, the R.L.A. has held that the allottees of premises requisitioned after 31-3-1948, i.e. from 1st April 1948 could not be considered to be on the premises during the riots specified in the Schedule and consequently those tenants would be exempt from payment of the riot tax. In the present case the premises were requisitioned on 28-1-1948 but as the allottees were not in occupation before the relevant date i.e. before 1-4-1948, they cannot be made liable to pay the riot tax. During the period 28-1-1948, the premises were admitedly in possession of Government and in the circumstances it would be competent to Government to claim exemption from riot tax under the Chief Presidency Magistrate's order dated the 4th July 1950. It is not clear whether the owner has paid the tax but if he has paid it he will be entitled to claim refund (cf. R.L.A's opinion No. 12969 dated the 12th September 1950).

Sd/- B.D.M.
Additional Secretary to Government

U.R. to R.D.(Accom.) No. 17779 , dated the 9th November 1951.

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The entire Hoor Sanatorium having derequisitioned so far back as July 1950, it is all the more necessary that the entire sanatorium should be restored to the trustees. As advised by the R.L.A in his last opinion No. 13223, dated the 18th August 1951, the Hoor Sanatorium being requisitioned as one unit, the trustees cannot be required to take possession of part of the said sanatorium The blocks which are still in the possession of the displaced persons ~~&~~ require to be given vacant possession of to the trustees. Consequently these displaced persons should be evicted as the premises occupied by them cannot be requisitioned; and the possession of the entire sanatorium should be given to the trustees. Till then Government would be liable to pay the rent for the whole of the sanatorium.

Sd/-J.R.Dhurandhar.
16-10

Remembrancer of Legal Affairs.

U.R. to R.H.D. No. 16426 , dated the 16th October 1951.

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19155/14-9-51.
Office of the R.L.A.

ombay Land
Requisition
Act, 1948.
Sec. 20(2)
(iii).

It would be more correct to describe in the preamble of the order at pages 113 ante that the land had been requisitioned under the Bombay Land Requisition Ordinance 1947. For it is under the Ordinance that the land was requisitioned and only virtue of section 30 20(2)(iii) of the Bombay Land Requisition Act, 1948, the requisitioning is continued.

Sd/-J.R.Dhurandhar.
7-11

Remembrancer of Legal Affairs.

U.R. to R.D.(Accommodation), No. 17684 , dated the
8th November 1951.

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Statement of the Case.

It is stated in R.D. (Accommodation) office note that "there appears no objection to make use of section 9A of the Bombay Land Requisition Act, 1948, after obtaining the landlord's consent. The landlord is not likely to go to court and if he does perhaps his consent can work as "estoppel". Secretary, R.D. sees no objection to it but the R.L.A. is requested to advise.

2. Section 9A of the Bombay Land Requisition Act, 1948, which was inserted by Bom. II of 1950, empowers Government to make an allottee a tenant of the requisitioned premises. This provision does not provide for taking the consent of the landlord. It provides for creating a statutory tenancy between the person to whom the requisitioned premises had been allotted and the landlord of the premises. If the consent of the landlord is to be taken for making the allottee the tenant of the premises section 9A will have no application at all and no action under that provision can be taken. If the landlord consents to accept the allottee as his tenant and if Government does not want to exercise its powers under section 9A the only course open to Government would be to release the premises on thelandlord agreeing (preferably in writing) to accept the allottee as his tenant on the premises being released . Consequently the course suggested in the R.D.(Accommodation) office note would not be legally feasible and section 9A cannot be resorted to with the consent of the landlord.

3 . In Miscellaneous Application No. 201 of 1950, the question about the validity of section 9A of the Bombay Land Requisition Act, as inserted by Bombay Act ii of 1950, was raised, but was not decided as it was not necessary for the purpose of the disposal of that application. In the course of his judgment in that case Chagla C..J. observed,

"we next .....

> "We next turn to the validity of Act II of 1950. That Act amended Act XXXIII of 1948 by extending the duration of Act XXXIII of 1948 from 31st March 1950 to 31st March 1952. By other sections it also amended certain substantive provisions of Act XXXIII of 1948. The most important amendment was that it enabled the Government to create statutory tenancy between the person to whom requisitioned premises had been allotted and the landlord of the premises."

before inserting section 9A by Bom. II of 1950, the question was considered in L.D. and the point was referred to the Advocate General for opinion. In the statement of the Case submitted to the Advocate General, it was stated as follows

"The question forconsideration is whether a provision can be made in the Bombay Land Requisition Act, 1948, to require the landlord of premises which are requisitioned or continued under requisition to let the premises to a specified person and to leave the relationship as landlord and tenant and payment of rent etc. to the parties, without committing Government in any manner after the order of requisition is withdrawn.

The Act was enacted mainly in exercise of the powers conferred on the Provincial Legislature by Government of India, Ministry of Law, Notification No. F. 311/47-C and G dated 21st October 1947, issued under section 104 of the Government of India Act, 1935, issued to enact laws with respect to the requisitioning of land. The subject-matter of the Act also falls under entry 21 in List II in the Seventh Schedule to the Government of India Act, 1935.

Under section 6(4) of the Act, Government can, by order in writing -

(a) requisition any vacant premises and may deal with the premises in such manner as may appear to it to be expedient; or

(b) require the landlord to let the premises to specified persons or class of persons or in specified circumstances.

Under section 5(1) of the Act, Government can , subject to the restrictions contained in the proviso, requisition any land for any purpose. To requisition land or premises means to take possession of the land or premises or to require

them to be placed at the disposal of the requisitioning authority. It is true that the power of Government to requisition any premises would include the power to deal with them in such manner as it may appear expedient to it. It may, therefore, be possible to provide as provided in section 8(1)(ii) of the Delhi Premises (Requisition and Eviction) Act, 1947 (XLIX of 1947) that Government may transfer the requisitioned premises by way of sub-lease. But such transfer would not create the relationship of landlord and tenant between the landlord and the person who would be holding the premises from Government by way of sub-lease. If any premises are not required to be continued under requisition, the proper course will be to release them from requisition as provided in section 9 of the Act. It would not be feasible to requisition the pre-mises and then ask the landlord to let them to a specified person or to requisition them for the purpose of asking the landlord to let them to a specified person. Such a provision would be ultra vires and would be challenged on the ground that the power to requisition is used only to bring pressure on the landlord to let it to a specified person. The provision as suggested cannot therefore be made in the Act."

In his opinion No. I of 1950 dated the 7th January 1950, the Advocate General (Mr. Daphtary) opined :

"I think item 21 in the second List of Schedule 7 to the Government of India Act is wide enough to enable Government to create, even compulsorily, the relation of landlord and tenant between the owner of property and any specified person. In fact under section 6(4)(b) of the Requisition Act, the Government has already taken power to require the landlord to let the premises to specified persons. However, for non-compliance with such an order there is no penalty. Accordingly the power of requisition will have to be used and some provision for establishing direct contact between the landlord and the allottee is necessary. This may be done by providing that upon an allottee being put in possession, there shall result a tenancy from month to month at the standard rent. It is suggested that such a provision might be challenged as being ultra vires on the ground that it is bringing pressure on the landlord to let to specified persons. There is, as I have said already power to dictate to the landlord to whom he shall let, and there is an element of pressure also, since if he does not let, the premises can be requisitioned, so that any further provision of the nature mentioned would not be a new principle. Item 21

"Relation of Landlord and Tenant" , would enable Government to legislate in any way it thinks fit as regards the creation of the relationship. I should add that there should be a provision that on the allottee taking possession there should not only be a creation automatically of a tenancy, but that thereupon the requisition should come to an end."

Section 9A was accordingly drafted and it provides that on the allottee being made a tenant the requisitioning order would cease to be operative and the land would be ~~x~~ deemed to be released. In view of the remarks made by the High Court, the question requires reconsideration and the Advocate General is requested to give his opinion.

Sd/-J.R.Dhurandhar.
Remembrancer of Legal Affairs.

U.R. to Advocate General, Bombay, No. 14619 , dated the 14th September 1951.

S.C. 9/6

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ADVOCATE GENERAL'S CHAMBERS,
HIGH COURT,
Bombay. 27th September 1951.

With reference to Unofficial Reference No. 14619 dated the 14th September 1951, I may state that when the Government - requisitioned the premises, under the Statutory powers, in -- occupation of a tenant, the tenancy does not done to an end. In spite of the requisition, under the General Law, the tenant continues to be liable to the landlord. Set (1920) 1 K.B.-- 680; (1922) 2 A.C. 180. Both these cases were followed by the Bombay High Court in the case of Tarab-ai Vs. Lala Padamchand reported in 51 B.L.R. 797. On de-requisition of the premises by the Government the tenant is entitled to the possession of the premises. S. 9A of the Bombay Land Requisition Act, 1948 was added by Bombay Act 2 of 1951. This section empowers empower the State Government to direct by an Order in writing that any-person, to whom any requisitioned premises has been allotted and who has been put in use and occupation thereof, shall continue in possession thereof as a tenant and the said premises shall be deemed to have been let out by the landlord to such person on payment of rent specified in the Order. Under sub-Section 2 on themaking ofsuch Order thepremises shall be deemed to have been released from requisition. The effect of this section is that once an Order is made under this section, the rights of the tenant under the General Law are taken away once and for all. Normally by reason of requisition thetenan is not put an end to ; but if an Order is made under Section the tenancy of the old tenant by necessary implication will come to an end as this section provides that the premises sh be deemed to have been let by the landlord to the allottee. This provision makes a general departure from the position - prevailing under the General Law when the premises are ~~requi-~~

tioned

requisitioned.

the effect of an Order under Section 9A is :-

(1) the rights of the old tenant are extinguished for all times.

(2) The premises are deemed to have been let by the landlord to the allottee.

Under the Bombay Land Requisition Act, 1948 amended by Bombay Act, 39 of 1950 the Government can requisition the premises only for the purpose of the State or any other --- public purpose. Section 8 of the Act makes provision for the payment of compensation when any land is requisitioned. When an Order is made under Section 9A the interest ofthe tenant in the requisitioned premises is extingusihed. It is possible to contend that this extinction of the interest of the tenant in the requisitioned premises is for public purpose andby - reason of Section 8 of the Act compensation is provided for. The tenant would therefore be entitled to his compensation. So far as the landlord is concerned an Order under Section 9 of the Act makes it obligatory upon the landlord to acce the allottee as his tenant. This will infringe the fundamenp tal right guaranteed to him under article 19(1)(f) , of the Constitution of India. There is no provision in the Act whereby payment of rent to the landlord in case of default by the allottee is guaranteed. It is doubtful that such a provision can be covered under article 19(5) of the Constitution of India. I therefore think that the validity of Section 9A is not free from doubt. Under the circumstances whether Government should compel a landlord to accept any allottee as his tenant when the law does not provide for any guarantee in case of default of payment of rentrequires careful consideration.

Sd/-

ADVOCATE GENERAL.

S.C. 9/7 4 copies.

Office of the R.L.A.

A copy of the U.R. to the Advocate General No. 14619, dated the 14th September 1951 together with a copy of the Advocate General's opinion No. 14, dated the 27th September 1951 is forwarded herewith.

2. In view of the opinion expressed by the Advocate General, it would be desirable to consider whether section 9A should continue in the Bombay Land Requisition Act. The question of extending the period of the Act will have to be considered next year. Along with section 9A, the question of section 6(4)(b) will have also to be considered. Until that question is decided, it will not be proper to pass new orders under either of the sections.

Sd/-J.R.Bhurandhar.
1-10

Remembrancer of Legal Affairs.

U.R. to R.D. (Accm.) , No. 15637 , dated the 1st October 1951.

S .C. 9/7

4 copies.

190268/14-9-51.

Office of the R.L.A .

Transfer of management of Nurses Hostel Whether premises can be requisitioned. -

As pointed out in R.D. note the present case would not come under the provision of the Bombay Land Requisition Act, 1948. The premises are accepted by the inmates of a hostel run by a person who also resides there. It is true that she has transferred the management of the hostel to another person. The only provisions in the Bombay Land Requisition Act under which requisition can be made are sections 5 and 6. Neither of the said provisions will apply to the present case.

Sd/- J.R.Dhurandhar.
6-11

Remembrancer of Legal Affairs.

U.R. to R.D.(Accom.) No. 17644 , dated the 7th November 1951.

S.C. 9/7

4 copies.

20807/8-10-51.
Office of the R.L.A.

The Bharat Seva Samiti does not appear to be a body registered under the Sonieties Registration Act, 1860. There will be some did difficulty in holding that requisition of premises for providing accommodation for such bodies not registered under the Societies Registration Act is for a public purpose within the meaning of section 5 of the Bombay Land Requisition Act, 1948, particularly when the Association is mot an established Association as can produce the yearly reports of its activities. Further the object set out in clause 2(a) of the Constitution of the Samiti is vague while there set out in 2 (b) are resticted to the members of the Samiti.

Sd/-J.R.Dhurandhar.
2-11

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom). No. 17395 , dated the 3rd November 1951.

S .C. 10/7

4 copies.

17307/21-8-51.
Office of the R.L.A.

Bombay Land Requisitioned Act, 1948. Sec. 6(4)(a) Requisition of premises for persons use inadequate accommodation.

Supressed vacancies can be requisitioned under Section 6(4)(a) to accommodate Government servants as it would be for a public purpose (See Hamabai V. S. of S. 13 B.L.R. 1097) Such vacancies can be requisitioned also to accommodate refugees who are houseless It is, however, doubtful if requisition forxsgm refugees who have accommodation but which is inadequate or inconvenient for them will be regarded as a public purpose by the High Court.

Sd/-J.R.Dhurandhar.
15-11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18157 dated, 15th November 1951.

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4 copies.

21335/15-10-51.
Office of the R.L.A.

The Government of India propose to acquire the property of the Asian Air Associates at Worli for the use of the posts and Telegraphs Department for housing the Bombay Telegraph Workshops. The question raised for consideration is whether the property can be requisitioned under the provisions of the Bombay Land Requisition Act, 1948.

2. Under sub-section (1) of section 5 of the Bombay Land Requisition Act, 1948, if in the opinion of the State Government it is necessary or expedient to do so, the State Government may by order in writing requisition any landfor the purpose of the State or any other public purpose. Similarly, clause (a) of sub-section (4) of section 6 empowers the State Government to requisition premises for the purpose of the S tate or any other public purpose. The words "for the purpose of the State or any other public purpose" were inserted in these provisions by Bombay Act XXXIX of 1950. Under the Act as it stands at present requisitioning of lands (which includes buildings) or premises is only possible for the purposes of the State or any other public purpose. Though the Act was enacted before the coming into force of the constitution, Its existence is now relatable to entry 36 in List II in the Seventh Schedule to the Constitution which is in these terms : "Acquisition or requisitining of property, except for the purposes of the Union, subje to the provisions of entry 42 of List III". So far as Union purposes are concerned there is a separate entry vi. Nx No. 33 in List I which is "Acquisition or requisitioni of property for the purposes of the Union". While discussing the competency of the State Legislature in enac ing Bombay Act 2 of 1950, which amended the principal Act of 1948, the Chief Justice of the Bombay High Court in Mir

Application No. 201 of 1950 (the State of Bombay vs. H.S. Alreja) observed that the only limitation placed upon the ~~Sr~~ State Legislature was that it could not legislate with regard to acquisition or requisitioning of property for purposes which are for the purposes of the Union. In theopinion the ?State Legislature under the Constitution is competent to legislate for any purpose other than the purposes of the Union. The proposal in the present case is whether the property at Worli can be requisitioned by the State Government for the purpose of housing the Telephone Workshops of the posts and Telegraphs Department. "posts and Telegraphs, telephones etc." is a subject allotted to the Union (vide entry 31 in the Union List). It is clear therefore that such requisitioning would be for the purposes of the Union which is prohibited by entry 36 in the State List. The answer to the question raised is therefore in the nagative.

Sd/- J.R.Dhurandhar.
21-11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18720 , dated 22nd November 1951.

S.C. 10/7

4 copies.

20159/51.
Office of the R.L.A.

The requisition in the present case being for housing a person with inadequate acccmmodation may not be considered for a public purpose (see R.L.A.'s opinion No. 18157, dated 15th November 1951); and is therefore likely to be held invalid. Consequently the proposal of the R.D. (Accommodation) to cancel the requisition order and issue a fresh requisition order is in order.

As regards the interpretation of the phrase "housing of homeless persons or persons without any accommodation" it would not correct to say that only first informants of suppressed vacancies who are without any accommodation, fall in that category because even housing of persons who have not reported any suppressed vacancies but who are without any accommodation or are homeless would be a public purpose. The only difference is that the person who reports a suppressed vacancy may be allotted the premises of which he has reported suppressed vacancy as soon as it is proved that there is actually a suppressed vacancy; whereas others who do not help themselves by reporting suppressed vacancies have to await their turn.

Sd/-J.R.Dhurandhar.
22-11

Remembrancer of Legal Affairs.

U.R. to R.D.(Accommodation) No. 18765, dated the
23rd November 1951.

Legal Department.

Requisitioning for the purpose of housing persons who are without accommodation would be a public purpose. If Shri Kulkarni and Shri Chatterji are without accommodation it would be possible to requisition accommodation for them.

Sd/ B.D.M.
Additional Secretary to Government.

U.R. to R.D. (Accom.) No. 8022, dated the 13th Nov. 1951.

S.C. 10-7
4 copies.

770-Confl. / 29-11-51.
Office of the R.L.A.

Shrimati Akshekar's title to the house is not at all clear and except for the statement of the Police Patil at pages 1 and 13 in the accompanying case papers there is nothing to coroborate for assertion. In fact ownership was claimed by Shri Ganpat Bhaskar Mhatre who was in possession of the house at the time of requisitioning in 1943 and also when it was derequisitioned. He had thus a prima facie right to receive the terminal compensation. The house was situated in the gaothan area in respect of which no record of rights is maintained. Government was, therefore, justified in recognising him as owner and making the payment to him. Besides, Shrimati Akshekar did not object to the payment ofthe compensation awarded to Shri Mhatre as early as 1943 by the Collector of B.S.D. nor did she claim ownership till 1949 after the terminal compensation was paid to him. Since Government had no knowledge of Shrimati Akshekar s title, if any, to thehouse, and the payment of the terminal compensation was made in good faith, Government's action is prowi protected by section 17(2) of the Defence of India Act, 1939. If Shrimati Akshekar considers herself entitled to the compensation itis open to her to sue Shri Mhatre and to recover it frcm him. At any rate she can have no claim against Government. The view taken by the R.D. is correct.

Sd/-J.R.Dhurandhar.
5-12

Remembrancer of Legal Affairs.

U.R. to R.D. NO. 1011-Confl. dated the 5th December 1951.

S.C. 10/7

24524/27-11-51.
Office of the R.L.A.

As the ground floor of the block has been allotted under section 6(4)(b) of the Bombay Land Requisition Act, 1948, it is not necessary to determine the compensation. The allottee, being the tenant of the premises, would be liable to pay the rent which the previous tenant was paying and ~~is~~ in case of any dispute between the parties he would be entitled to have the standard rent fixed under section 11 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Sd/-J.R.Dhurandhar.
6-12

Remembrancer of Legal Affairs.

U.R. to A. & F.D. No. 19669 , dated the 7th December 1951.

S.C. 10-7
4 copies.

Office of the R.L.A.

The premises being requisitioned under rule 75A (1) of the Defence of India Rules, will be deemed to be continued under requisition under section 3 of the R.L. (C. of P.) Act, 1947 and in view of the provisions of that section the appropriate Government may use or deal with any requisitioned land in such manner as may appear to it to be expedient.

The premises being requisitioned for the Food Controller and the Milk Commissioner, they were presumably requisitioned under the authority of the Bombay State Government and this Government can therefore use or deal with the premises in any manner it pleases. The fact that the premises are at present used by the State Textile Controller can be no cause of grievance for the landlords since the use of the premises by the State Textile Controller would be use by the State Government. It is not therefore necessary to intimate the change of occupant to the landlords nor is it necessary to cancel the existing requisitioning orders and issue fresh ones, in favour of the State Textile Controller.

Sd/- J.R.Dhurandhar.
5-12

Remembrancer of Legal Affairs.

U.R. to R.D. No. 19871 , dated the 11th December 1951.

S.C. 10/7

4 copies.

20358/2-10-51.
Office of the R.L.A .

Bombay Land Requisition Act, 1948.

An appeal is a continuation of the suit (see Ramsingh v. Sankar Dayal, 1928 A.I.R. All 337). Consequently when the appeal against the decision of Shri Justice Tendolkar was pending, his decision could not be taken as conclusiv and the landlord was not entitled to ignore the restrictions imposed by section 6 of the Bombay Land Requisition Act. Since however the landlord could be deemed to have l let out the premises bonafide under the belief that he was free to do so in view of the decision of Shri Justice Tendolkar, no action should be taken.

Sd/-J.R.Dhurandhar.
3-12

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 19421, dated the 4th December 1951.

S.C. 10/7

4 copies.

21899/22-10-51.
Office of the R.L.A.

The R.L.A. is requested to advise on the scope of section 4(3)(ii) of the Bombay Land Requisition Act, 1948, (vide Secretary, R.D.'s note at page 147 ante).

2. In this case the Collector of Poona by his Order dated 12th October 1950 issued under section 5(1) of the Bombay Land Requisition Act, 1948, requisitioned property situate at Pimpri known as "Stud Farm" comprising of 6 survey numbers "including all structures and buildings and diesel engine with all equipments for supplying water and electricity". The property belonged to one Major Arthur Swamvur who has authorised Shri Vadilal Gandhi and his brother to manage the said property and to sell the same along with structures. In view of the order of requisition Shri Gandhi requests that he might be allowed to remove the looking glasses and sanitary fittings. The question for the consideration of the R.L.A is whether these fittings can be said to be covered by the Collector's order of requisition.

3. The Collector's order dated 12-10-1950 was made under sub-section (1) of section 5 of the Bombay Land Requisition Act, 1948. Under that provision it is competent to requisition any land for a State purpose. It is true that the requisition order made by the Collector of Poona refers to the six survey numbers in question including "all structures and buildings" . But the expression "land" as defined in section 4(1) of the Act includes benefits to arise out of land, and buildings and all things attached to the earth or permanently fastened to the buildings or things attached to the earth. Since the requisition order was made under section 5 reference to section 4(3)(ii) i.e. the definition of "premises" does not appear to be appropriate. In view of the definition of "land" quoted above it does not appear it can be said that looking glasses and sanitary fittings are covered by the requisition order made by the Collector of Poona. The words "permanently fastened to buildings" in the definition of "land" in section 4(1) have reference

to things such as locks, bars, doors and windows which have no separate existence from the house (cf. Peru Bepari vs. Ronuo (1884) , II cal. 164 quoted at page 31 of Mulla's Transfer of Property Act, 2nd Edn.). Sanitary fixtures such as tubs, water basins, looking glasses etc. referred to in the last pars. of the Collector's letter at page 93 ante being for more beneficial enjoyment of the property cannot be said to be things permanently fastened to the buildings. (see Narayan Sa vs. Balaguruswamy Nadar A.I.R. 1934 Mad. 187 at p. 188). The use of different phrasseology in section 4(3)(ii) also shows that. The claim of Shri Gandhi to take away these articles appears therefore to be sound.

Sd/-J.R.Dhurandhar.
19-12

Remembrancer of Legal Affairs.

U.R. to R.D. (Accom.) No. 20267, dated the 19th December 1951.

S.C. 10/7
4 copies.

17388/22-8-51.
Office of the R.L.A.

It appears that certain lands in Surat District are required for the Tapti Canal Project but the owners do not agree to hand over possession by mutual agreement and consequently the work of excavation of the channels is hampered. Revenue Department proposes that the Bombay Land Requisition Act, 1948, which provides for a quicker mode of taking possession of the land, may be resorted to. The R.L.A. is requested to advise whether the proposal would be legally feasible.

It is true that if the Act is extended to the areas in which the lands are situated under section 5(1) of the Act, it would be competent for Government to requisition any land for the purpose of theState or any other public purpose. The provision for lands for excavating channels for canal project would be a public purpose andordinarily there would be no legal objection to requisitioning land for such a purpose. But the object of the Bombay Land Requisition Act is to take possession of land temporarily as an emergency measure and the duration of the Act therefore is itself limited. The requisitioning of land for a canal project would not be for a temporary purpose since the idea of taking over such land forthe project is to provide for a permanent scheme. Consequently, the requisitioningof land for such purpose, namely, canal project, will be held to be malafide intended to circumvent the provisions of the land Acquisition Act. This argument would be reinforced if the land Acquisitio Act is also resorted to simultaneously along with the Bombay Land Requisition Act. In the circumstances, it appears that it would not be desirable to resort to the Bombay Land Requisition Act. Steps should, therefore, be taken to acquire the lands under the land Acquisition Act.

Sd/-J.R.Dhurandhar.
21-12
Remembrancer of Legal Affairs.

U.R. to R.D. (Div.) No. 20407 , dated the 21st December 195]

20762/6-10-51.

Office of the R.L.A.

Bombay Land Requisition Act, 1948. Section 5 -- B.R.H. & L.H. R.C. Act 1947. Sections 4(1) and 13(1).

It appears that the bungalow prospect Park on Ridge Road belonging to Shri Mohammedbhai Rowji has been leased out to the late Sir H.J.Kania. The ground floor of this bungalow was requisitioned by Government under section 5 of the Bombay Land Requisition Act, 1948, and has been allotted to the Italian Consul. The landlord's application for a writ was dismissed by the Bombay High Court and in appeal the Su preme Court confirmed it. The Compensation Officer by his order dated 7th July 1950 has directed the Italian Consul to pay two-fifths of Shri Kania's liabilities, that is, rent at the rate of Rs. 200 per month and proportionate share of water tax and immoveable property tax. It appears that the Italian Consul has made certain changes in the water pipes and is also contemplating some structural alterations, which alterations according to the covenants of the lease would not be allowed without the landlord's permission. In view of these circumstances, it appears that the landlord has given instructions to his pleader to file a suit for ejectment of Sir Kania. The question raised for the R.L.A's consideration is whether the threatened suit if filed would be defensible.

The requisitioning of leased premises would not create a tenancy with regard to such premises and the person who has been let into possession of the requisitioned premises and is required to pay rent for that accommodation is not thereby made a tenant thereof (see Southgate Borough Council V. Watson 1944 King's Bench 541). Consequently, notwithstanding the requisitioning of the ground floor of the bungalow and the allotment thereof to the Italian consul, the lease of the bungalow to Sir Kania has remained intact

that is to say, Sir Kania would continue to be the tenanat of the Bungalow and be liable to pay rent and other charges in respect thereof under the lease, while he would be entitled to claim compensation from the Italian Consul for the requisitioned premises. As statedabove, it appears that under the lease no material structural alterations of the building can be effected without the consent of the landlord. The question would, therefore, be whether, if the Italian Consul carries and out the structural alterations as contemplated, there would be any breach of the covenants of the lease involving termination thereof and the ejection of the lessee.

Section 13(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, specifies the circumstances in which thelandlord may recover possession. Clause (a) provides "that the tenant has committed any act contrary to the provisions of clause (o) of section 108 of the Transfer of Property Act, 1882," and clause (b) provides : "That the tenant has, without the landlord's consent given in writing erected on the premises any permanent structure." Section 4(1) provides that the provisions of the Act shall not apply in respect of premises requisitioned by Government. "Premises" as defined in clause (8)(b) of section 5 means any building or part of a <u>building let separately.</u> The whole building was let out in the present case and the requisitioned premises not beinglet out separately, it appears that the benefit of section 4(1) may not be available. It is true that by reason of requisition, the successor of Sir Kania is unable to exercise any control over the requisitioned premises during the period of requisition and prohibit theallottee from carrying out any structural alterations. But the doctrine of frustration does not apply to leases and the

lessee's covenants are generally regarded as absolute. Thus his liability under the covenant to pay rent, to repair and to deliver up in repair is not affected by the casualties which interfere with his enjoyment of the demised land. Where premises were requisitioned by military authorities and were destroyed by fire during their occupation, it was held that the lessee was liable upon his covenant to pay rent and to repair and deliver up in repair notwithstanding such occupation and destruction (see Matthey v. Curling 1922 2 A.C. 180). In view of the principle that the doctrine of frustration does not apply to leases, it appears that if the Italian Consul carries out structural alterations there is the risk of the lease being terminated on the ground of breach of the covenant and also of the provisions of the Rent Control Act. It appears, therefore, desirable to ask the Italian Consul not to carry out any material structural alterations in the requisitioned premises and to warn him that if he does any thing of the kind the premises will have to be derequisitioned.

Sd/-J.R.Dhurandhar.
19-11

Remembrancer of Legal Affairs.

U.R. to R.D. No. 18532 , dated the 20th November 1951.

S.C. 10/7

4 copies.

19828/21-9-51.

Office of the R.L.A.

The premises being already requisitioned the landlord could not let them to a person of his choice only because at the time of passing of Justice Tendolkar's judgment, declaring the Act invalid, the premises were actually vacant. If according to the landlord, the requisition order was had in law, he could have applied to the Court for having the order ~~quash~~ quashed but he could not of his own accord deal with the premises as he chose, The effect of the decision of the Supreme Court would be that the Bombay Land Requisition Act, 1948 was valid, at all times. Besides, the defect in the requisition order due to non-specification of the purpose for which the requisition was made, is cured by L.A.Bill No. XLV of 1951. Hence there seems no objection in enforcing the requisition order especially as the premises are proposed to be used for a public purpose viz., for housing a Government sergant.

Sd/-J.R.Dhurandhar.
30-11

Remembrancer of Legal Affairs.

U.R. to R.D. (Accommodation) No. 192-34 , dated the 30th November, 1951.

S.C. 10/7

4 copies.

24423-A/26-11-51.

Office of the R.L.A.

Bombay Land Requisition Act, 1948, sec. 6(3) Exchange of premises by practising fraud on Government.

The past history of the case leaves no room for doubt that fraud was practised upon Government in securing permission for the exchange of premises. From the evidence on record, the result of the transaction is that Shrimati Premabai Madhavji vacated the flat No. 9 of the National Garage Building in xx favour of Shri Bobde who occupied the same long prior to the grant of permission. Shrimati Premabai does not appear to have occupied Block No. 8 of Jestaran Baug given to her in exchange of her premises. The permission for exchange of the premises was apparently granted under section 6(3) of the Bombay Land Requisition Act, 1948, on the distinct understanding that the parties vouched for the correctness of the information revealed by them and that it was liable to cancellation for sufficient cause. In fact there was xix no exchange of premises because Shri Bobde was reported to be in occupation long before permission for exchange of premises was given. If in view of the specific condition laid down in the letter granting permission, the permission is now cancelled it should be with a view to restore the status quo. In a similar case, in his opinion No. 6020, dated 3rd May 1950, R.L.A. advised thus :-

"Both the flats at Sea Croft and Chhotu Terrace should be requisitioned and the flat in Chhotu Terrace should be allotted to Shrimati Alimchandani. The requisition order and the allotment order should be sent along with the communication and she should be asked to move into the flat immediately".

It may however, be pointed out that under section 6(4) of the Bombay Land Requisition Act, 1948, Government can requisition the premises for the purpose of the State or any other public purpose. In view of this provision, it does not appear that Government can requisition flat No. 9 of the

National Garage Building and Block No. 8 of Jestaram Baug with a view to restore status quo, andany such requisition order is likely to be challenged by thelandlords. If, therefore, Government now cancels the permission with a view to restoring status quo, there being no power vested in Government to bring about the original position, the cancellation order issued would appear to be meaningless. The matter may, therefore, be allowed to stand as it is.

Obviously, the whole transaction appears to be fishy and if Shri Bobde is deprived of his possession of flat No.9 of the National Garage Building, it is not unlikely that he will take the matter to Court, and Government will have to face an awkward position.

Sd/-J.R.Dhurandhar.
4-12

Remembrancer of Legal Affairs.

U.R.. to R.D. (Accommodation) No. 19422, dated the 4th December 1951.

S.C. 10/7
4 copies.

Legal Department.

The Revenue Department (Accommodation) may bring to the notice of Messrs. Little & Co. that the son of the petitioner owns a laundry in Bombay, and request the Collector of Bombay to make further enquiries as to the property of the late judgment debtor (see Rule 98(2) of the Law Officers Rules) for proceeding against in execution of the order of the Supreme Court. The proposal to take proceedings in insolvency against the estate of thelate Advani as well as his heirs may be taken only when it is not possible to ascertain the property forming part of the estate of the late Advani.

Sd/-
10-8

For Secretary to Government.

U.R. to R.D. (Accom.) No. 12938 , dated the 11th August 1951.

S.C. 10-7

4 copies.